IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4098 OF 2005

Gopal Pandurang alias
Pamya Shetty alias Naik ... Petitioner

V/s.

Madhavnagar Co-op. Housing
Society Ltd. & Anr. ... Respondents

Mr.S.B. Prabhavalkar for Petitioner
Mr.A.A. Kocharekar for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 16, 2005**

P.C.:

. The Petition raises the issue as to whether a written statement may be allowed to be filed when a suit is amended, although earlier orders disallowing the filing of the written statement continue to be in force. According to the Petitioner, the Court by its order dated 15.4.2004 had refused the respondent No.1 permission to file the written statement beyond the period stipulated in law and had discharged the notice. Thus, the delay had not been condoned and by an order dated 18.9.1999 directed that the suit should proceed ex-parte against defendant No.1, respondent No.1 herein was passed. Accordingly, the trial proceeded. The respondent No.1 was permitted to cross examine the Petitioner as well as the Petitioner's witness. At the stage of arguments, the Petitioner amended his plaint

after obtaining orders from the trial Court. Respondent No.2 amended his written statement. At that stage Respondent No.1 took out Interim Notice No.1150 of 2004, praying that the earlier order dated 18.9.1999 be set aside and its written statement be taken on record. This notice was rejected. Another notice was moved by the Respondent No.1 being Interim Notice No.1195 of 2005 for the following prayers:

> (a) this Honourable Court be pleased to permit the Defendant No.1 to lead evidence in the above matter;
>
> (b) this Honourable Court be pleased to review and set aside the order of ex-parte against the Defendant No.1 passed by this Honourable Court in the above suit and permit the Defendant No.1 to file written statement in the above suit in view of the amended plaint and controversy involved in the above suit.

2. The trial Court thereafter heard the parties and set aside the ex-parte order passed against the respondent. The respondent was permitted to file written statement in view of the amendments to the plaint.

3. The Interim Notice No.1195 of 2005 indicates that it has been filed for reviewing the earlier order passed on 2.11.2004, refusing of permission to the applicant i.e., the respondent No.1 herein to file

additional written statement. The Court took the view that since there is no written statement on record, there is no question of filing any additional written statement. This order came to be reviewed and the trial Court has permitted the filing of the written statement since the plaint was amended.

4. The Court has permitted filing of the written statement in reply to the amended plaint. However, it will have to be restricted only to those paras of the plaint which have been amended. The written statement was not taken on record since it was sought to be filed beyond the stipulated time. However, this cannot preclude any reply to the amendments in the plaint. The learned Advocate for respondents relies on the judgments in *Western Coalfields Ltd. v/s. Rajkumar Kanhiyalal Bhiwapurkar & Ors.,* **1986 Mh.L.J. 525;** *Vimal Kumar Nathmal Goenka v/s. Vinod Kumar Nathmal Goenka & Ors.,* **1999(1) Mh.L.J. 180**; *Ramnik Vallabhdas Madhvani & Ors. v/s. Taraben Pravinlal Madhvani,* **AIR 2004 SC 1084** and *Vithal Ramchandra Patil v/s. Bhagwat Waman Gaikwad & Ors.*, **1996(2) Mh.L.J. 1064**. These judgments do not take the case of the respondents any further since the order of 15.4.2004 disallowing the written statement has not been challenged by Respondent No.1.

5. The written statement be filed only with regard to the amendments in the plaint within four weeks. Writ Petition is disposed accordingly.